

HEARING OFFICER'S REPORT

Regarding: Proposed Amendments to Delaware Regulation #41: "Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products, Section 1 – Architectural and Industrial Maintenance Coatings" of the State of Delaware "Regulations Governing the Control of Air Pollution"

Lisa A. Vest
Hearing Officer

October 12, 2006

I. Background:

A public hearing was held on October 2, 2006, to receive comment on proposed revisions to the State Implementation Plan for the Attainment and Maintenance of the National Ambient Air Quality Standards by amending the existing Delaware No. 41 (now Regulation #1141) entitled, “Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products, Section 1 – Architectural and Industrial Maintenance Coatings” of the State of Delaware “Regulations Governing the Control of Air Pollution”, under Start Action Notice (SAN) 2006-08. The proposed amendments concern the specification of a finite period for certain record retention by manufacturers, a revision to certain definitions of products affected by this Regulation, corrections of certain typographical errors contained within the existing Regulation, and the renumbering of the entire regulation to be consistent with the style manual of the Code of Delaware Regulations.

The need for these proposed revisions arose as a result of comments received by the Department from stakeholders after the public hearing held on August 22, 2001, which concerned the original promulgation of Section 1 of Regulation 41. The Department subsequently committed to revise Section 1 of this Regulation at the time of the Environmental Appeals Board hearing held in December of 2002, specifically, to reflect the change in the specialty primer definition to include sealing in efflorescence, as well as to include a record retention period of five (5)

years by manufacturers. At both the time preceding the hearing of October 2, 2006, and at the hearing itself, the Department received no public objections or concerns about these proposed amendments, with the exception of an e-mail from Jim Sell of the National Paint & Coatings Association, which expressed full support by the NPCA for these proposed amendments to Regulation No. 41. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

At the time of the hearing on October 2, 2006, Gene Pettingill of Air Quality Management (AQM) Section of the Division of Air and Waste Management offered the Department's ten (10) exhibits pertaining to these proposed amendments, and provided a brief explanation as to the reasons for the need to amend the existing Delaware regulation on Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products.

As noted above, the Department agreed to add a specific record retention period for manufacturers and to modify the definition of specialty primer due to stakeholder comments at the EAB Hearing held in December 2002 following the initial promulgation of Regulation No. 41, Section 1. The change in the regulation with regard to record retention is found in Section 1.5.1, wherein additional language now requires that each manufacturer of a product subject to a VOC content limit in Table 1-1 shall keep records demonstrating compliance with the

VOC content limits “...for a period of at least five years (60 months) from when generated”.

With regard to the proposed revision to the definition of a “Specialty Primer, Sealer, and Undercoater”, as found in Section 1.2, “Definitions”, that item has been revised to define such a product as “...a coating labeled as specified in 1.4.7 and that is formulated for application to a substrate to seal fire, smoke or water damage....to seal efflorescence; or to block stains....” Such revision is again found in Section 1.4.7, as the phrase “To seal in efflorescence” is now added therein as Section 1.4.7.6.

Again, no public comments (other than those which voiced support for this promulgation, as noted previously) were received by the Department either prior to or at the time of the hearing of October 2, 2006, so the proposed amendments as submitted to the Delaware Register of Regulations in September of 2006 stand unchanged. In order to provide a complete and thorough report concerning this promulgation (and for the Secretary’s review), a clean copy of these proposed amendments is attached hereto as Exhibit “A”, and is expressly incorporated herein.

III. Conclusions and Recommendations:

Based on the above discussion, I conclude that the Department has provided appropriate reasoning regarding the need for this proposed amendment, has addressed all public comment provided subsequent to the initial promulgation of this Regulation in 2001, and has incorporated the public concerns and suggestions provided to the Department into the

record developed in this matter. Accordingly, I recommend promulgation of this proposed amendment in the customary manner provided by law.

Further, I recommend the following findings:

1. Proper notice was provided as required by law.
2. Promulgation of this proposed amendment will specify a finite period for certain record retention by manufacturers, to wit: five (5) years; will revise the definition of a specialty primer, sealer, undercoater product to include sealing in efflorescence; will correct certain typographical errors which presently exist; and will renumber the entire regulation to be consistent with the style manual of the Code of Delaware Regulations.
3. Promulgation of these proposed revisions will made Delaware's record retention period equivalent to that of Maryland and New Jersey, both of which are fellow Ozone Transport Commission (OTC) member states.
4. With the revision to the definition of a "Specialty Primer, Sealer, and Undercoater", Delaware's definition will be equivalent to that of Pennsylvania, also a fellow OTC member state.
5. These revisions, once promulgated, will fulfill DNREC's commitment made previously to reflect the required change to Delaware's specialty primer definition and to include a specific record retention period within this Regulation.

6. This rulemaking will further the policies and purposes of 7 Del.C.
Ch. 60 by continuing to ensure safety of the public health and
environment, while taking into account industry concerns.

/s/Lisa A. Vest.
LISA A. VEST
Hearing Officer